

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

Michael Tancredi Esq. SBN 101425
300 South Spring Street, 12th Floor
Los Angeles, CA 90013
Telephone: 213-346-6637
Facsimile: 213-897-9241

Attorneys for John Garamendi
California Insurance Commissioner

**BEFORE THE COMMISSIONER OF THE DEPARTMENT OF INSURANCE
OF THE STATE OF CALIFORNIA, LOS ANGELES**

In the Matter of the Licenses and Licensing
Rights of

NATIONWIDE LIFE INSURANCE
COMPANY,

Respondent.

File No. **UPA 03-03-2150**

OAH No. _____

**ORDER TO SHOW CAUSE RE CEASE AND
DESIST ORDER**

(California Insurance Code Sections 790.03
and 790.05);

STATEMENT OF CHARGES/ACCUSATION
(California Insurance Code Sections 790.03
and 790.05);

NOTICE OF MONETARY PENALTY
(California Insurance Code Sections 790.03,
790.05 and 790.035);

**NOTICE OF INTENT TO SUSPEND
CERTIFICATE OF AUTHORITY** (California
Insurance Code Section 704).

Date: To be set by the Office of Administrative
Hearings on a date not less than 30 days from
service of the Order to Show Cause.

Time: 9:00 a.m.

Place: Office of Administrative Hearings
320 West Fourth Street Suite 630
Los Angeles CA 90013

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STATEMENT OF CHARGES/ACCUSATION

1. The Respondent

From July 8, 1932 to the present Respondent Nationwide has been the holder of a Certificate of Authority (Certificate Number 1148-6) issued by the Commissioner authorized to act in the capacity of a Disability and Life Insurer. Nationwide, under the name "Nationwide Health Plans," writes, markets, advertises and sells individually underwritten health insurance to individuals through its association group policy. It is a health insurer offering hospital, medical or surgical benefits in the individual market. Nationwide uses an interactive web-site to advertise, market and sell its products in California.⁴ The web-site asks: "How can we help you today?" It then provides the user with an opportunity to "Get a Quote" on an "Individual/Family" "Health Plan." The user is then directed to a page which permits the user to view the "Individual/Family" "Health Products." Upon viewing this page, the user is told: "Nationwide Health Plans are ideal for individuals, and families, offering the benefits you want at affordable rates. NHP offers you freedom of choice. Choose your doctors and hospitals, without the boundaries of service areas or the inconvenience of primary care physicians." The user can then fill out an application on line: an application that requests personal information, the type of information relevant to underwriting an individual policy.

Further, in positions taken before the Department on other occasions, Nationwide has asserted its concern with its "ability to write in the individually underwritten market."

2. The Legislation

The Managed Risk Medical Insurance Board (hereafter "MRMIB") administers the Managed Risk Medical Insurance Program (hereafter "MRMIP") to provide major risk medical coverage to residents who are unable to secure adequate private health coverage. Assembly Bill 1401, codified in Insurance Code Section 10127.15, requires that coverage under the MRMIP now last for 36 months. At the end of this period, disenrolled participants have up to 63 days to enroll in a standard benefit plan required to be offered by insurers or health care service plans currently writing individual health coverage. These standard benefit plans will be substantially the same as

⁴ <http://www.nhpcalifornia.com>

1 the MRMIP plans. Upon enrollment in the standard benefit plan, coverage is guaranteed
2 renewable. The premiums for standard benefit plans will be 110% of the comparable MRMIP
3 plan. Insurance Code Section 10127.15(a)(1) requires those health insurers offering hospital,
4 medical, or surgical benefits in the individual market in California to offer a policy in the
5 guaranteed coverage program.

6 **3. The Department of Insurance June 25, 2003 Notice to All Insurers writing**
7 **individual Health Insurance**

8 On June 25, 2003 the California Department of Insurance (hereafter “Department”) provided
9 written Notice regarding Assembly Bill 1401 to all insurers currently writing individual or group
10 health insurance concerning The Notice clearly identified the insurers which must participate in
11 the program as follows:

12 “Insurance Code Section 10127.15(a)(1) requires that health
13 insurers offering hospital, medical, or surgical benefits in the
14 individual market in California offer a policy in the guaranteed
15 coverage program. An insurer in either of the following categories must offer a
16 standard benefit plan:

- 17 - Insurers writing individual health policies
- 18 - Insurers writing health policies to associations which include individuals”

19 Additionally, the Notice provided instructions and set forth a July 15, 2003 date for filing with the
20 Department the appropriate policy, rate, application, and matrix.

21 Further, the Notice stated that the Department expected that the insurers and their agents would
22 fairly and affirmatively market their standard benefit plan to MRMIP disenrollees; that the first
23 disenrollment of MRMIP disenrollees was to occur on September 1, 2003; that MRMIP
24 mailed its 90-day notice to approximately 9,000 disenrollees on June 1, 2003;
25 that if they have not already done so, insurers needed to distribute training materials to agents
26 concurrently with the filing of their standard benefit plans so that they will be ready to market the
27 product by mid-August, 2003; that for MRMIP participants who will lose their coverage on
28 September 1, 2003, the Department expected the insurers to make the effective date of the

1 standard benefit plan the day following an applicant's termination date from MRMIP, if
2 requested by the applicant.

3 Finally, the notice advised that any insurer not intending to participate in the program must
4 inform the Department with an explanation regarding nonparticipation.

5 **4. Nationwide Informs Department it will not comply with Insurance Code Section**
6 **10127.15 and the Department's June 25, 2003 Notice**

7 On July 11, 2003 Nationwide responded in writing to the Department's Notice. Nationwide stated
8 that it sells association sponsored group health insurance through the California Farm Bureau
9 Federation and does not sell any individual policies in the California marketplace as defined by
10 California law. Nationwide's position was that it need not comply with the Notice because
11 California Insurance Code Section 10127.15 applies to insurers who sell individual policies, only.

12 **5. Department Informs Nationwide that it is required to comply with Insurance**
13 **Code Section 10127.15 and the June 25, 2003 Notice**

14 On August 21, 2003, the Department responded to Nationwide's unilateral⁵ decision to violate
15 Insurance Code Section 10127.15 and the Department's June 25, 2003 Notice. The Department
16 advised Nationwide's in-house compliance counsel that it is required to offer a standard benefit
17 plan to persons who have exhausted their coverage under MRMIP. The Department advised that
18 Nationwide does offer individually underwritten health insurance to individuals through its
19 association group policy. Therefore it is considered to be a health insurer "offering hospital,
20 medical or surgical benefits in the individual market in California" and is required to participate
21 in the post MRMIP program as mandated by Insurance Code Section 10127.15.

22 The Department repeated its position in its August 27, 2003 letter to Nationwide. In that letter, the
23 Department advised Nationwide that time was of the essence because many MRMIP participants
24 were losing their coverage on September 1, 2003. The Department informed Nationwide that a
25 failure to file a standard benefit plan by September 2, 2003 (September 1, 2003 being Labor Day)
26 would result in an immediate administrative enforcement action.

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28 ⁵ No other insurer writing health insurance has advised the Department that it will not comply with Insurance Code
Section 10127.15 on the basis that it sells "association" sponsored insurance and not individual insurance health
policies.

1 **6. Nationwide Again Refuses to comply with Insurance Code Section 10127.15 and**
2 **the Department's June 25, 2003 Notice**

3 In response to the Department's August 27, 2003 correspondence to Nationwide, referenced
4 above, Nationwide advised the Department in its letter of August 29, 2003 that it would not
5 comply with Insurance Code Section 10127.15. Nationwide again asserted, as it had in its first
6 refusal letter of July 11, 2003, that it did not sell an "individual" product as defined under
7 California law.

8 **7. Other Insurers in California offering individual health insurance, including**
9 **those offering individually underwritten insurance through association group**
10 **policies, are in compliance with Insurance Code Section 10127.15. These**
11 **companies are participating in the post MRMIP program and are offering the**
12 **standard benefit plan to disenrollees. Nationwide's failure to comply is providing**
13 **it with an unfair competitive advantage in the market place.**

14 As the Department advised in its June 25, 2003 Notice, referenced above, a group of MRMIP
15 participants would lose their coverage on September 1, 2003. Nationwide's failure to
16 comply with the legislation and the Department Notice has allowed it to avoid participation in this
17 first wave of disenrollees. Nationwide's intentional act of non-compliance provides it with
18 an unfair competitive advantage in the marketplace. Nationwide's action is an attempt to shift the
19 complete burden of writing coverage for the disenrollees to its competitors. It has created a
20 windfall for Nationwide and continues to benefit Nationwide to the detriment of the insurers in
21 compliance who are shouldering a disproportionate share of the burden, a share that increases,
22 as each day passes.

23 **8. Nationwide's failure to comply with Insurance Code Section 101927.15**
24 **represents a public statement that it does not write, sell and market an**
25 **'individual' health insurance product under California law; a statement which is**
26 **untrue and deceptive. Additionally, based upon information and belief,**
27 **Nationwide has asserted to the public, in other manner and means, that it is not**
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1 **participating in the post MRMIP program, again because it does not write, sell or**
2 **market an ‘individual’ health insurance product under California law.**

3 Nationwide has advised the Department that it will not participate in the program outlined
4 in Insurance Code Section 101927.15. Further, its failure to so comply has been stated to the
5 public by virtue of its failure to offer the standard benefit plan to MRMIP disenrollees.

6 Additionally, based on information and belief, the Department is aware that Nationwide has
7 asserted to the public, in other manner and means, that it is not participating and is not required to
8 participate in the plan. The conduct and the assertions, alone, and together, represent untrue,
9 deceptive and misleading “statements.”

10 **9. Nationwide’s Non Compliance with Insurance Code Section 101927.15 represents**
11 **ongoing unfair practices and prohibited acts pursuant to Insurance Code Section**
12 **790.03 (b) and InsuranceCode Section 790.06.**

13 Insurance Code Section 790.03 (h) (b)⁶ states in relevant part that making or disseminating any
14 statements to the public, communicated in any manner or means whatsoever, containing any
15 assertion or representation with respect to the business of insurance which is untrue, deceptive or
16 misleading is an unfair method of competition and an unfair and deceptive act or practice.

17 Additionally, Insurance Code Section 790.06 provides for an order to show cause hearing and
18 injunctive relief for unfair practices or acts or unfair methods of competition not specified in
19 Insurance Code Section 790.03. As specified in paragraphs 2 through 8 herein, Nationwide has
20 made an assertion, and continues to hold this assertion, before the Department of Insurance, and
21 the public at large, which is contrary to California law, the Department’s Notice, and its own
22 advertising and marketing materials. The action has been taken in an effort to obtain an unfair
23 advantage over other similarly situated insurers and has acted to place the burden of the new
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25 ⁶ **Insurance Code Section 790.03 (h):** The following are hereby defined as unfair methods of competition and unfair
26 and deceptive acts or practices in the business of insurance. (b) Making or disseminating or causing to be made or
27 disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by
28 public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion,
representation or statement with respect to the business of insurance or with respect to any person in the conduct of
his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the
exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

1 legislation disproportionately on the backs of other insurers. September 1, 2003 was the date in
2 which Nationwide was to have available a standard benefit policy under Insurance Code Section
3 10127.15 and the Department's June 25, 2003 Notice. Each day beyond that date represents a
4 separate act in violation of the legislation and a separate unfair method of competition and
5 deceptive act under Insurance Code Section 790.03 (b). Further, each separate act is willful under
6 Insurance Code Section 790.035, as Nationwide has been advised directly of its non-compliance
7 and has stated affirmatively to the Department in writing on two separate occasions that it will not
8 comply.

9 **10. Nationwide's conduct is in violation of Insurance Code Section 704. Nationwide**
10 **continues to market and sell health insurance to individuals in the state. At the**
11 **same time it refuses to carry out in good faith the mandated standard health**
12 **insurance contracts called for in Insurance Code Section 10127.5.**

13 Insurance Code Section 704 provides that the Commissioner may suspend the certificate of
14 authority of an insurer for up to one year for failure to carry out its contracts in good faith.⁷ As
15 specified in paragraphs 2 through 8 herein, Nationwide has willfully failed to comply with the
16 provisions of Insurance Code Section 10127.5 and the Commissioner reserves his rights, after
17 hearing, to suspend the Certificate of Authority held by Nationwide.

18 **PRAYER**

19 WHEREFORE, the Commissioner prays for judgment against Respondent, jointly and
20 severally as follows:

21 a. An Order to Cease and Desist from engaging in such unfair acts or
22 practices in violation of CIC Section 790.03 (b) as set forth above;

23 b. An Order that the Respondent's actions represent unfair or deceptive
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25 ⁷ Insurance Code Section 704: The commissioner may suspend the certificate of authority of an insurer for not
26 exceeding one year whenever he finds, after proper hearing following notice, that such insurer engages in any of the
27 following practices: (a) Conducting its business fraudulently. (b) Not carrying out its contracts in good faith. (c)
28 Habitually and as a matter of ordinary practice and custom compelling claimants under policies, or liability judgment
creditors of the insured, to either accept less than the amount due under the terms of the policies or resort to litigation
against such insurer to secure the payment of the amount due. The order of suspension shall prescribe the period of
such suspension. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2
of the Government Code, and the commissioner shall have all the powers granted therein.

practices pursuant to Insurance Code Section 790.06;

c. Pursuant to Insurance Code Section 790.035, for willful acts in violation of Insurance Code 790.03 (b) as set forth above, a penalty in an amount to be fixed by the Commissioner not to exceed ten thousand dollars (\$10,000.00) for each act; and for each unfair or deceptive act or practice not found to be willful, a penalty in an amount to be fixed by the Commissioner not to exceed five thousand dollars (\$5,000.00) for each act; as stated above, the Department views each day that passes without compliance as a separate, willful act;

d. For acts in violation of CIC Section 704(b) suspension of Respondents' certificate of authority for not exceeding one year.

Dated: September 11, 2003

California Insurance Commissioner

By _____-s-_____

Michael Tancredi, Staff Counsel

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